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ABSTRACT

In today's political, economic, and ecologically-sensitive climate a university's or college's indiscriminate acceptance of gifts can have catastrophic consequences. Some donations of cash or even real property can bring with them legal and political, as well as ethical and philosophical complications that can cost the institution considerable money and embarrassment. This booklet provides guidance on what a gift policy should contain and how it might be implemented. Information provided covers the types of gifts that can be made to an institution such as various kinds of outright cash gifts, real and tangible personal property, wills, commercial paper, life insurance, and charitable lead trusts and gift annuities. The manner in which the gift policy is implemented is also discussed and it is suggested that the institution's governing authority conduct a comprehensive orientation to acquaint individual schools, colleges, and departments with the institution's gift policy. The appendix contains a model university gift policy. (GLR)

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ED 363 181

Learning the Law in the Home

FRANCIS S. SMITH

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Looking the Gift Horse in the Mouth

Everyone knows the old saying "Don't look a gift horse in the mouth." For colleges and universities, such advice is foolish at best. Indeed, indiscriminate acceptance of gifts can have catastrophic consequences for academic institutions.

This was not always the case. In fact, there was a time not too long ago when development officers could be given relatively free rein to solicit and accept gifts. In today's climate, though, the issues are too varied and complex. For example, fifty years ago, an endowment for scholarships restricted to white males might not have been a problem. Today, such a gift would be fraught with legal and political, as well as philosophical, complications.

Donations of real property are even more problematic. Attorneys and development officers live in mortal fear of waking up some morning to learn that the Environmental Protection Agency has arrived to "help" with a toxic or hazardous waste problem on a piece of real property donated by an illustrious alumnus "bearing gifts."

Potential complications are exacerbated by the difficult economic times in which colleges and universities find themselves today. In the short term, the demographic outlook for the college age population is dismal, and economic stagnation has caused traditional funding sources such as corporations and government entities to drastically reduce their financial support for higher education. The result has been and will continue to be intensified pressure on development officers to increase revenue. And this pressure will undoubtedly lead to a tendency toward greater risk-taking in the gift arena.

In light of the foregoing, it is essential for colleges and universities to have comprehensive, well-thought-out gift policies and procedures which look the gift horse straight in the mouth and ensure that there are no unwanted surprises lurking inside. This pamphlet is intended to provide some guidance on what a gift policy should contain and how it might be implemented.

I. The Gift Policy

The first step in the development of a strong gift program is the creation of a written policy that reflects the institution's approach to the acceptance of gifts. Such a document should include a general policy statement and specify the methods of gift-giving the institution will accept, how the gifts should be received, and by whom. The written policy should also include any minimum monetary amounts that must be involved before certain types of gifts, such as those earmarked for endowed scholarships or chairs, will be accepted. Finally, the policy should outline the process by which a gift will be accepted or rejected. The following are some of the issues that might be included in an institution's gift policy.

Policy Statement

A written gift policy should commence with a clear, concise statement of the philosophical framework of the institution's gift solicitation and acceptance policies. Initially, this statement should convey a positive view of development practices. It should acknowledge that gifts are critical to the continued existence of any educational institution and are to be encouraged. The policy statement should also indicate the types of gifts the institution prefers, e.g., those with few, if any, restrictions.

Following this initial statement, the policy should state any limitations on gifts which the institution feels are necessary. These may include:

1. Limitations imposed by local, state, or federal law;
2. Limitations imposed by the institution's founding, controlling, or operational documents, such as its charter, constitution or bylaws;
3. Provisions to limit gifts which are too restrictive in purpose or which fail to conform to the institution's academic purposes and priorities;
4. Provisions to limit gifts which would impinge upon the institution's right to accept other gifts or grants, or which place an undue burden upon the institution's resources;

5. Provisions to limit gifts which would affect adversely the academic freedom of students or faculty; and

6. Provisions to limit gifts which would subject the institution to adverse publicity.

This list is by no means exhaustive; it is designed only to suggest some of the issues that the policy statement should address.

General Considerations

The gift policy should first identify the types of accounts, e.g., unrestricted, restricted, or endowment, to which gifts may be donated and what, if any, requirements there may be with respect to the acceptance of gifts to each.

The policy should also state the institution's procedures for the receipt of gifts, including who should actually receive them, who should acknowledge receipt, who should correspond with prospective donors about the terms and conditions of acceptance, and who will formally accept or reject them. This section should also describe how the institution handles monetary gifts which are not accompanied by any donor instruction concerning their use. Many institutions simply place such gifts in their unrestricted funds until or unless the donor later indicates an intended use.

There are still other issues regarding intent. For example, a donor may stipulate that the money be used for a scholarship to be given in the name of a deceased parent. The institution may then need to determine whether the donor intends to fund a single scholarship or to create an endowment for scholarships. The gift policy should alert or require that donors be alerted to such issues. It should also indicate under what conditions the institution will create an endowed scholarship fund, as opposed to a revolving loan fund. Finally, the gift policy should inform prospective donors, as well as members of the academic community, how gifts will be credited.

The last point is an important one. A dean may encourage an alumnus or colleague to make a gift, believing that the donation will be credited to a specific scholarship fund or endowed chair. At some later point, however, the dean may learn that, consistent with the institution's unwritten

policy, the money was placed in unrestricted operating funds and will not be used as he or she had represented. To complicate matters, if the gift was part of some matching gift program, it could conceivably take years to rectify the situation and, in the process, could cost the institution a valuable donor—and perhaps a dean. A written policy clearly delineating how gifts will be treated internally would alleviate many such problems.

It is critical to note in this connection that while the policy should provide a process for accepting and effectuating donations, it should not be overly narrow or limiting. Almost as detrimental as no policy at all would be a policy which unduly restricted the types of gifts that might be accepted. Any policy should be drafted with a view toward allowing appropriate flexibility and creativity. After all, that is what institutions of higher education are all about.

Another desirable element in the gift policy is a statement establishing the minimum amount that must be contributed to accomplish the donor's intent. This is particularly important for endowed scholarships and chairs, prize funds, book funds, and lectureships. A common mistake in this context, however, is to establish a fixed minimum donation for an endowed fund and leave it. Changing economic conditions both within and outside the academic community can easily affect the value of endowment funds. It is therefore advisable for institutions to review periodically the performance of their investments, as well as their own internal financial condition, and to modify minimum contributions accordingly.

The gift policy should also contain a statement that the institution will abide by the requirements of the Internal Revenue Code and its regulations.

Methods of Giving

There are essentially two methods of donating assets to a college or university: outright gifts and planned gifts. Outright gifts are those in which the institution has the assets at its immediate disposal and in which the donor retains no continued interest. Planned gifts may involve

either deferred or immediate donations. However, the institution does not immediately (and may never) acquire ownership. Planned gifts generally are not taken out of the donor's current earnings; rather, they usually involve the transfer of assets which affect the distribution of the donor's estate. An institutional gift policy should discuss both outright and planned gifts and stipulate the terms under which each will be accepted.

Outright Gifts

Cash. The most common form of an outright gift is, of course, cash, usually delivered in the form of a check. A gift policy should identify the University official to whom checks should be delivered, the appropriate payee and the manner in which the gift date will be determined. This last point is important because most donors will want to know in what tax year to report the gift. Moreover, many corporations have matching programs with time limitations.

Securities. Securities are a second type of outright gift and come in several varieties—publicly-traded stocks or bonds, shares of stock in closely-held companies, and government issues. Regardless of the security type, it is essential that the policy clearly outline methods of execution and delivery to ensure that there is in fact a legal transfer of ownership to the institution.

As with checks, the policy should state to whom the securities should be delivered and the manner in which the date of the gift will be determined. It is a good idea to require that easily-negotiated securities be hand-delivered or sent by registered mail, with a return receipt requested. This practice protects both the donor and the institution.

Since unendorsed certificates are non-negotiable, it is very important for the policy to specify how the actual transfer of ownership documents should be effectuated. The donor should be asked to obtain a stock power from a banker or stock broker and to execute both it and the stock certificate itself appropriately.

Another important issue to address in the gift policy is how securities will be valued at the time of delivery. One approach is to take the mean of

the securities' market value when delivered (in other words, the difference between the highest and the lowest selling prices quoted on the day of the gift).

Donations of closely-held securities present special problems for institutions. These stocks are not traded on stock exchanges and, therefore, are difficult to value. Moreover, they are often subject to shareholder or other agreements which may limit the institution's ability to convert them into cash. The gift policy should provide that, before an institution will accept donations of stock in closely-held corporations, the gift must be reviewed by the general counsel, the development officer, the fiscal officer and, if possible, an investment counselor.

Real Property. Among the most important issues to be addressed in a gift policy are gifts of real property. This aspect of gift acceptance is so fraught with peril that some academic institutions have separate written policies focusing specifically on real property gifts.

One of the first issues to be confronted is "what is it worth?" The vast majority of donors hope to maximize the income tax deductions they derive from their gift. Consequently, they hope to obtain the highest real estate appraisal possible. While this is understandable, colleges and universities must beware of inflated appraisals.

For example, let us assume that an institution accepts an inflated appraisal and includes the inflated value of the property in its financial statement as a real property asset. If the institution's auditors subsequently learn that the property was worth something less, they may well require that the institution's balance sheet reflect the difference between the actual value and the inflated value as a loss. In good economic times, this might not present a major problem; however, in poor times, the adjustment could cause an institution's balance sheet to show a deficit. It might be very hard to explain to a board of trustees or a state legislature how a gift either caused or increased a deficit.

Thus, the policy should stipulate that an appraisal of the gift property be conducted by a qualified independent appraiser, selected by the institution (to avoid even a seeming conflict of

interest such as that delineated above), but preferably paid for by the donor.

Colleges and universities may face other serious difficulties with real property gifts. Among these, none harbors a greater potential for economic disaster than environmental hazards.

Take, for example, the controversy surrounding the "gift" that Howard Conant of Valspar Corporation gave to Goodwill Industries of Chicago. A brief recitation of the facts, as reported in the October 27, 1989 *Wall Street Journal*, should serve to illustrate the need for extreme caution in this context.

Valspar had a paint factory on the west side of Chicago which it donated to Goodwill. When Goodwill sought to sell the property for cash, it learned that the property contained storage tanks holding hazardous waste, which had leaked into the soil, contaminating it. As a prior owner, Valspar was still legally responsible for creating the problem, but Goodwill, as the current owner, was also liable. Its portion of the cleanup costs alone, not including its legal expenses, threatened to bankrupt the organization.

Institutions that have not confronted the nightmare of contaminated property are in for a rude shock if it ever presents itself. Not only the Environmental Protection Agency but other interested parties, such as subsequent title holders, have a number of potent statutory weapons with which to bludgeon property owners.

The most frightening of these weapons are, collectively, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 11001, *et seq.*, commonly known as "CERCLA" or "Superfund." Under Superfund, the EPA is required to identify hazardous substance sites which pose the greatest danger to public health and the environment and to place them on a National Priority List. Once a property is on the list, EPA notifies the "Potentially Responsible Parties" of their potential liability for the cleanup costs. Any persons involved in the process of generating, transporting, treating or storing a hazardous substance on the site may be found

liable, jointly or severally. Anyone who becomes the owner of a contaminated property after the hazardous substance was placed there is considered to have stored the substance in question, and liability attaches even if the storage occurred long before the enactment of Superfund.

It is possible, however, to take steps which might limit potential exposure. But in order to avail itself of the "innocent landowner" defense, a college or university would have to show that it obtained the property without "actual or constructive knowledge" of the hazardous condition. While there is little case law to interpret these terms, constructive knowledge seems to involve a requirement that the institution exercise "due diligence" in acquiring title to the property.

Any gift policy, then, should include a process which provides an institution with evidence that it exercised due diligence. The process should include a request for information about the history of the property from the present owner, a title search to determine the prior owners, and an inquiry to federal, state, and local environmental protection agencies as to whether there is any reason to believe that hazardous waste is present. In an abundance of caution, it might be advisable to retain the services of a firm specializing in the assessment of environmental risks.

The problems associated with gifts of real property are by no means limited to valuation and environmental hazards. A myriad of woes can result from maintaining real property outside of the campus envelope, in other cities or in foreign countries. Though more mundane than those involving hazardous materials, the complications can be equally troublesome. Institutions, for example, can face property taxes if the inherited or donated property is not used immediately for tax-exempt purposes. Moreover, scarce resources might have to be diverted to ensure that the subject property remains in compliance with local laws or ordinances, such as health and building codes.

Some years ago, a university learned the consequences of not fully investigating a real property donation. The institution was given a house in a distant resort city and failed to view

the property before accepting title. Sometime later, it received a bill from the city for cutting grass and removing refuse from the property. The university immediately attempted to sell the property, only to find out that it was worthless. What's more, the institution could not even interest anyone in accepting the property as a gift. After receiving several bills from the city, it was notified that the property was considered a health hazard, was infested with vermin, had been occupied by drug addicts, and was structurally unsound. With the notice came a bill for the demolition of the house. When the university considered having the city take the property, in lieu of paying the bill, it was advised that the cost of demolition exceeded the value of the property and that the city would seek a judgment against the university for the difference.

Still other problems may arise when a donor places a condition upon the use of the property, e.g., that it be used as a working farm, museum, or conference center. If the operation is unprofitable, as often proves the case, the institution will have to reallocate resources to subsidize it.

Given the numerous factors that can wreak havoc, it is imperative that a gift policy be as comprehensive as possible on the question of real property. Specifically, the policy should indicate the types of real property gifts that the institution will accept, e.g., single-family residences, condominiums, apartment buildings, commercial property, farms, unimproved land. The policy should also provide that real property will be accepted only after a thorough review of at least the following considerations:

1. The usefulness of the property for the institution's purposes;
2. The marketability of the property;
3. The market value of the property as determined by a qualified appraisal;
4. The existence of, or potential for, any encumbrances, such as mortgages, restrictions or easements; and
6. The existence of any costs associated with the property, such as condo fees, taxes, and insurance.

Tangible Personal Property. Along with gifts of real property, gifts of tangible personal

property present colleges and universities with their greatest challenge. Therefore, it is extremely important that considerable thought be given to these types of gifts, as well.

First, institutions must decide what types of personal property will be accepted. Donors attempt to give their alma mater everything from priceless art treasures to junk automobiles. The acceptability of such items should be determined by their marketability—that is, how readily they can be converted into cash—or by their potential use for one of the institution's stated purposes.

This latter issue is not without some import. For example, suppose that the gift in question is a functioning business enterprise which cannot readily be sold and is not related to one of the tax-exempt activities of the institution. The institution should consider whether it has the wherewithal to operate and pay taxes on the business until it can be disposed of or integrated into the institution's regular programs. Some gifts, such as radio and television stations, involve not only tax consequences, but legal and regulatory requirements as well. Such gifts should not be accepted without a thorough evaluation of their short- and long-term implications. The gift policy, then, should state clearly the types of personal property the institution will accept and the process it will use to make that determination.

Second, institutions should recognize that donors of tangible personal property are not always certain that they want to give the item away. Or if certainty exists at the time of the transfer, subsequent events sometimes cause benefactors to reconsider their intent. We have all heard stories about the not-so-famous artist who donated his or her works to an institution and then, after becoming famous, maintained that the works were only "on loan." More often, the family of a deceased artist might make this claim. To avoid such problems, the gift policy should provide that the donor must state in writing what his or her specific purpose is in making the gift before the college or university will accept it.

This becomes particularly important in those

instances where the gift in question consists of works of art or collectibles, such as rare books or stamps. An institution may either not have an interest in keeping these items or lack the resources to maintain them so as to preserve their value. Books and works of art, for example, must be kept under special light and temperature conditions. Thus, accepting them may have a considerable fiscal impact. The gift policy, therefore, should inform donors that the institution reserves the right to dispose of personal property gifts in the future if it deems such action financially advisable or necessary.

The third and most difficult issue to be addressed here is "what is it worth?" The problems here are similar to those discussed above in the real property section. Thus, as with real property, the gift policy should direct the development officer to inform a prospective donor that the institution will obtain or require an independent appraisal and will be guided by that appraisal.

The implementation of gift policies is discussed in some detail beginning on p. 18. At this point, it may suffice to note the advisability of providing for a gift committee to assess gifts of tangible property and their attendant consequences, and to recommend to the chief executive officer or the governing board whether and under what circumstances to accept them. It is clear that a great deal of thought and analysis has to go into making such decisions. A standing committee can develop the expertise to address the issues effectively.

Planned Gifts

The second method of giving is some form of planned gift. As indicated earlier, this type of gift usually emanates from the donor's estate and always requires some sort of document to effectuate it. This section defines a few of the more common forms of planned giving and discusses some of the issues a gift policy should address.

Wills. Probably the most common form of planned giving involves bequests in wills. Individuals bequeath everything from cash and securities to books and manuscripts to their own bodies. With respect to outright bequests, the

policy should make clear that the same types of conditions apply to their acceptance as would apply if the donations had been made in life. Academic institutions often operate as if they were required to accept everything that is given to them in a will, possibly believing that such gifts cannot or should not be refused. Adherence to this type of thinking can be very expensive.

Testamentary gifts can involve the same costs and other pitfalls as *inter vivos* gifts. After all, a toxic waste dump is a toxic waste dump whether the donor is alive or dead. In fact, the situation may be far worse if the donor is dead because the institution may be the only "deep pocket" the government can find to pay for a cleanup.

In addition to establishing general conditions for types of testamentary gifts, it may also be advisable for the policy to specify the types of trusts and trust arrangements the institution will accept, as well as the actual language or wording the institution prefers. The more common types are discussed below.

Institutions must tread carefully in this area, however. They ought not appear to be either writing the will itself or giving legal advice; either may invalidate the gift. Thus the policy should contain a strong disclaimer stating that any proposed language is designed strictly to provide internal guidance to the institution's officials and to inform prospective donors of the institution's preferences, not to provide legal advice. The policy also should direct university officials to suggest that donors contact private attorneys and should indicate the institution's willingness to work with the attorney selected.

Whether the preferred testamentary language is included in the policy or suggested elsewhere, it should afford the institution adequate flexibility to carry out the donor's wishes. Donors, on the other hand, should be given to understand that the academic world is by nature evolving and that unduly restrictive gifts may in time become burdensome and useless. Donors should be encouraged to put in their wills language which would allow either the institution or an outside trustee to modify the terms of the be-

quest, consistent with the donor's intent, without seeking judicial approval.

Charitable Remainder Trust Arrangements. A vehicle often used for planned giving is the charitable remainder trust. The Internal Revenue Service Code defines a charitable remainder trust as follows:

Generally, a charitable remainder trust is a trust which provides for a specified distribution, at least annually, to one or more beneficiaries, at least one of which is not a charity, for life or for a term of years, with an irrevocable remainder interest to be held for the benefit of, or paid over to the charity. (I.R.C. Sec. 664(d)(1))

The essential element of the trust is that it provides current income to a third-party beneficiary and defers the gift to the charitable entity. The donor, however, can deduct the value of the deferred remainder as a charitable contribution. (I.R.C. Sec. 170(f)(2)(A)). The three most common types of charitable remainder trusts are annuity trusts, unitrusts, and pooled income funds.

Annuity Trusts. Under an annuity trust, the donor transfers property in trust, reserves an annuity interest in the property for the benefit of a third-party beneficiary for a certain time (his or her life or a maximum of twenty years) and contributes the remainder interest in the trust to a charitable entity such as a college or university. The donor must specify a fixed dollar amount (which may not be less than five percent of the initial net market value of the transferred property) that is to be paid annually to the beneficiary. When the beneficiary dies, or the fixed time period expires, the remainder of the property goes to the institution. (I.R.C. Sec. 1707(f)(2)(A))

Unitrust. A unitrust is similar to an annuity trust in that the donor transfers the property to a trust, reserves an annuity interest for a third-party, and contributes the remainder interest to charity. However, the annuity to the beneficiary is variable rather than fixed. The annual payment is a fixed percentage (at least five percent) of the net fair market value of the trust's fixed assets. (I.R.C. Sec. 664(d)(2))

Pooled Income Trust. Under the third type of charitable remainder trust, a donor transfers property to a pooled income fund maintained by a charitable institution. The property is invested, along with other properties in the pool, and each donor's beneficiary receives his or her pro rata share of the fund's earnings for the duration of the donor's life. Upon the donor's death, fund assets equal to his or her share devolve to the institution for its own purposes.

The important point to remember for all types of charitable remainder trusts is that they must be established in strict conformance with Internal Revenue Service Code requirements. Even the slightest deviation from these requirements can defeat the trust and thus the donor's intent. The gift policy, therefore, should emphasize the need for care in drafting remainder trusts. It should also indicate the institution's general policy toward the acceptance of remainder trusts and under what circumstances it is willing to serve as a trustee for them. In developing this aspect of the policy, the institution should consider how effectively it can perform all the requisite financial management tasks. Since the role can involve substantial costs, colleges and universities may want to establish a minimum gift amount before agreeing to serve in a trustee capacity.

Similarly, institutions may wish to place limitations on the number and the age of third-party beneficiaries of these trusts, as well as on the types of assets it will accept as contributions.

Charitable Lead Trusts. Two other popular forms of planned giving are charitable lead trusts and charitable gift annuities. In a charitable lead trust, the donor places his or her gift assets in a trust, which then makes annual payments to the college or university for a fixed term of years. At the end of the term, the remainder reverts to the donor or to another third-party beneficiary. The annual payment to the institution can follow either the annuity trust or the unitrust model.

Charitable Gift Annuities. With a charitable gift annuity, the donor transfers cash or other assets to an institution and the institution agrees to pay him or her a specified amount annually for life. Basically, the donor receives an

annuity from the institution instead of purchasing one from an insurance company. However, the difference between the value of the property transferred and the value of the annuity guaranteed constitutes a charitable gift to the institution instead of profit to the insurance company.

The gift policy should treat charitable lead trusts and charitable gift annuities much the same as it treats remainder trusts. That is, it should indicate whether these options are available and whether they carry any dollar or time limitations. The process for accepting and managing these gifts should also be addressed.

Life Insurance. Life insurance policies that name a college or university as beneficiary have become quite common giving alternatives. The donor can either purchase a new policy or assign to the institution an existing policy which is no longer needed for family protection. Under either option, the institution becomes the owner of the policy as well as its beneficiary.

The gift policy should state what the institution will do if the donor fails to continue paying the premiums. For example, the institution could assume responsibility for the premiums and thus receive the full value of the policy at the donor's death, convert the policy to a paid-up policy of reduced value, or surrender the policy for an immediate face value payment.

II. Implementation of the Gift Policy

The manner in which the gift policy is implemented is as important as its substance, perhaps even more so. One of the most difficult aspects of academic management is introducing a new way to accomplish something, especially when imposed from the top down. For a gift program to be effective, all parts of the institution must work together toward the same objective.

Orientation

Once the institution's governing authority has approved the policy, a designated official should conduct a comprehensive orientation. Individual schools, colleges, or even departments may have independent development officers or other ongoing development activities. Some

schools or colleges may be miles or even countries away from the home campus. Various affiliated groups such as alumni organizations and athletic booster clubs may also be actively involved in fund raising. All these components must be pulled together and acquainted with the institution's newly formalized approach to gift acceptance.

Gift Committee

An effective gift committee can lend vital support to gift policy administration. Given the scope and complexity of the issues involved, it is virtually impossible for one individual to resolve them all. Only through a team effort can an institution hope to identify and successfully address all the relevant considerations.

The core membership of the committee should include several key administrators—the chief development officer, because the implementation of any gift policy would naturally fall under his or her aegis, the general counsel, because many of the issues have legal aspects, and the chief fiscal officer or an appropriate representative, because there are obviously issues relating to money management.

Other members of the committee might include representatives from the physical facilities management area because they could advise on the institution's ability to maintain and manage personal and real property gifts, as well as what resources might be entailed. Their participation would also be helpful for gifts involving renovation or construction. Consideration might also be given to including the public relations officer since he or she could help identify gifts that have potentially adverse publicity consequences and opportunities for publicizing those that do not. Additional members would depend upon the institution's particular structure, resources and customs. At many institutions, faculty representation would probably be considered appropriate.

Brochure

It might be useful to develop a brochure or pamphlet summarizing the gift policy for the general public and, more particularly, potential

donors. Such a document would be best served by emphasizing the elements that encourage giving, thereby averting the impression that might otherwise be conveyed by the necessary emphasis on controls and restrictions in the policy itself.

III. Conclusion

Donations are crucial to the financial well-being of colleges and universities; given their importance and the expense of administering them, one might expect institutions to devote concerted time and attention to gift policies and their implementation. Many, however, do not, and this is indeed unfortunate. It takes only one mistake in this complex area to generate considerable costs and embarrassment.

And so, rather than blithely accept any and all gifts given to them, colleges and universities should explore all potential problems, present and future, however remote they may seem. They should indeed look every gift horse straight in the mouth before they accept any gift offered to them.

Appendix: Model University Gift Policy¹

Policy Statement

The College/University strongly encourages the solicitation and acceptance of gifts which enable it to fulfill its purposes of teaching, research, and community service. For an institution dedicated to higher education, gifts are essential. The College/University cannot survive without them.

Gifts may be sought from individuals, corporations, foundations, and federal, state and local governments. However, they may be sought only for purposes, positions, and programs which already have appropriate academic or administrative approval.

The College/University is unable to accept gifts which are too restrictive in purpose or inconsistent with its stated academic purposes and priorities. Gifts the College/University receives must not inhibit it from seeking gifts from other donors, be they similar or different, foreign or domestic. Further, no gift can be received which limits, beyond a general definition of subject area, the research that a faculty member or student can perform.

The College/University values and will protect its integrity, its independence, and the academic freedom of the College/University community. Gifts that may expose the College/University to adverse publicity, require expenditures beyond the College/University's resources, or involve the College/University in unexpected responsibilities because of their source, conditions, or purposes will be referred to the (appropriate official). The (appropriate official) may withhold approval of acceptance, pending a review by faculty members or administrative personnel appointed for that purpose. Under

1. The title "Model Gift Policy" is somewhat of a misnomer. This policy is actually something more than a sample and something less than a model. It is intended to provide some idea of how a gift policy might look, not as a model to be followed rigidly.

This policy combines elements from a number of schools' gift policies with some of the author's own ideas. The author would like to acknowledge, in particular, the kind assistance of Catholic University, Duke University, Stanford University, and Thomas Flygare, Esquire.

other circumstances, the (appropriate official) delegates the authority to receive gifts, and, in appropriate cases, receives gifts personally.²

The College/University cannot accept gifts which involve unlawful discrimination based upon race, religion, sex, age, national origin, color, handicap or any other basis prohibited by federal, state, and local laws and regulations. Nor can the College/University accept gifts which obligate it to violate any other applicable law or regulation, or which violate the College's/University's (articles of incorporation, charter, constitution, or bylaws).

The most useful gifts are those with the fewest possible restrictions. Unrestricted funds allow the College/University to address its most pressing needs. Gifts for unrestricted endowment are the most welcome.

This policy is designed to provide guidance to the College/University community and the general public so as to facilitate the gift-giving process. The College/University does not intend to stifle philanthropic creativity. Therefore, this policy is to be interpreted liberally so that prospective donors may enjoy the greatest freedom possible in formulating their gifts.

Methods of Giving

Many types of assets may be used to provide gifts to the College/University. A variety of methods of giving to the College/University allows donors to choose the most appropriate for their circumstances and interests.

Outright Gifts

Outright gifts are those placed at the immediate disposal of the College/University and in which the donor retains no interest. They may be either restricted or unrestricted in purpose. Gifts which are donated to the College/University without any express limitation placed upon them will be credited to the unrestricted fund accounts.

2. This model does not provide for a gift committee. However, a policy could name the gift committee wherever the model indicates that a number of College/University officials must be consulted.

Special Purpose and Unrestricted Endowment Funds

The College/University may approve the establishment of special purpose and unrestricted endowment funds upon receipt of gifts or commitments which meet its approved financial and other criteria. Endowments bearing individuals' names or otherwise rendered discrete from unrestricted funds must be approved by the (appropriate official and/or governing body).

There are several types of endowments. The most commonly accepted are:

1. Endowed Chair. A fully endowed academic chair may be established with a minimum gift of (state amount).

2. Visiting Professorships. A visiting professorship may be established with a gift of at least (state amount).

3. Fellowships. A fellowship may be established with a gift of (state amount).

4. Lectureships. An endowment fund for a lectureship may be established with a gift of (state amount).

5. Scholarships. An endowed scholarship may be established with a fund of not less than (state amount) or a guarantee of annual support for one or more recipients totaling at least (state amount) per recipient.

6. Others. The College/University is willing to work with prospective donors on the terms and conditions of other restricted or unrestricted endowment funds, provided they support traditional academic activities or functions and are large enough to yield a meaningful annual income.

In all cases, the establishment of a special purpose endowment fund requires the prior approval of the (appropriate official and/or governing board).

Because conditions change over time, all endowment instruments should contain the following contingency clause:

If, in the opinion of the (governing body and/or the appropriate official) of the College/University, all or part of the funds cannot be applied in strict conformance with the purposes previously stated, they may use these funds for other appropriate purposes as nearly aligned to the original intent of the donor as good conscience and need dictate within the authorized powers of the College/University.

Cash Gifts

The most frequent method used to make a gift to the College/University is a personal check. Checks should be made payable to (the College/University) and mailed or delivered to:

Appropriate Official
College/University
Address

The postmark date is the gift date for gifts of cash mailed to the College/University.

Gifts of Securities

Publicly-traded securities, shares of stock in closely-held companies, bonds, and government issues may be given to the College/University. Gifts of securities may be made by sending the certificate and an executed stock power for each separate issue of stock or bond to the (Appropriate Official, College/University, and Address).

Publicly-Traded Securities. These are securities regularly traded on a public stock exchange. The value of the gift will be the mean of the highest and lowest selling prices quoted for the stock on the day of the gift, as defined below.

Closely-Held Securities. These are shares of stock in entities which have been organized for profit-making purposes, and are rarely traded on stock exchanges. Donors may give shares of closely-held corporate securities to the College/University in the same manner as publicly-traded securities. However, because closely-held stock is not publicly-traded, these securities present special concerns. To convert them into cash, the College/University must own the securities. Thus, it will not, formally or informally, enter into any redemption agreement with the donor. Gifts of closely-held securities may only be accepted by the (appropriate official) and reviewed by (the development officer or gift committee) and (legal counsel).

Methods of Delivery

If securities are hand-delivered to the College/University, the value of the gift will be the mean of its fair market value on the date of delivery. Donors should endorse stock certifi-

cates only upon delivery to the College/University. For securities which are hand-delivered, the gift date is the day the securities are delivered to the College/University.

If the securities are mailed to the College/University, the value of the gift will be its fair market value on the date the securities were mailed. Donors should obtain a stock power from their banker or broker, signing their name exactly as it appears on the certificates, and have their signature guaranteed by their banker or broker. The stock power and a letter of instruction should be mailed to the (appropriate official) under separate cover from the stock certificate(s). The College/University should be designated on the stock certificate(s), stock power, or related instruments of transfer as (institution's corporate name). The stock certificate(s) should be sent by registered mail, return receipt requested, to the (appropriate official). Unendorsed stock certificates are non-negotiable. The postmark date on the stock power will be used as the gift date when the stock certificate and stock power are mailed under separate covers.

Non-Traditional Investments

The College/University may accept gifts of non-traditional investments, such as partnership interests, after a thorough review of the following factors:

1. marketability;
2. nature of any applicable restrictions;
3. legal and other liabilities associated with the asset;
4. carrying costs such as administrative and legal fees; and
5. exposure to unrelated business income tax liability.

Real Estate

The College/University may accept gifts of real estate, including houses, condominiums, commercial properties, farm land, rental property, and undeveloped land, after a thorough review of the following factors:

1. the usefulness of the property for College/University purposes;
2. the marketability of the property;

3. the existence of restrictions, reservations, easements, and/or other limitations;

4. the existence of encumbrances, such as mortgages and mechanics liens;

5. carrying costs, such as property owner's association dues, taxes, insurance, and other maintenance expenses; and

6. fair market value in relation to the costs and limits listed above as determined by a qualified appraisal conducted in accordance with Internal Revenue Service ("IRS") standards.

Prior to the acceptance of any parcel of real property, an assessment of the potential environmental risks will be conducted. This assessment shall include the following:

1. an inquiry of the present owner regarding his, her, or its knowledge of the history of the property;

2. a title search to determine who the prior owners might have been;

3. a consultation with federal, state, and local environmental agencies to find out whether the property has any history of hazardous waste contamination; and

4. a visual inspection of the property for any evidence of environmental hazards.

An environmental audit conducted by a professional service also may be required. For all gifts of real estate, the (development officer) will consult with the College/University (treasurer) and College/University (legal counsel) concerning the implications of accepting the gift. The decision to accept gifts of real estate resides with the College/University (chief executive officer) (and governing body, if necessary).

Tangible Personal Property

The College/University may accept gifts of tangible personal property, including works of art, jewelry, antiques, coin, stamp and other collections, automobiles, manuscripts, and books. Such gifts may be accepted only after a thorough review indicates the property is readily marketable or may be used by the College/University in a manner consistent with one of the purposes for which it was granted status. An essential issue for donors to consider before

contributing a gift of tangible personal property is whether they would like the College/University to use or display the property. Prospective donors should be advised that the College/University reserves the right to sell or otherwise dispose of the personal property in question, if such action is financially advisable or necessary.

If the College/University intends to sell a gift immediately, rather than use it, the donor must be informed that IRS rules will probably limit the amount of the charitable deduction to the donor's cost basis. Whenever donors estimate their gifts of tangible personal property at \$5,000 or more, they must obtain a written appraisal by a qualified independent appraiser. The College/University cannot appraise or assign valuation to gifts of tangible property. Such gifts must be accepted by the (appropriate official) in consultation with the (appropriate College/University officials), including the College/University (legal counsel).

Planned Giving

Planned gifts may be either deferred or outright. They involve the transfer of substantial assets which affect the distribution of the donor's estate. These gifts do not immediately confer institutional ownership and generally are not taken out of current earnings. The College/University will serve as sole trustee of any deferred gift which requires the appointment of a fiduciary.

The acceptable methods of creating deferred gifts to the College/University are described below.

Bequest in Will

A bequest is a gift of any amount or form made to the College/University in a donor's will. Bequests may provide for a specific dollar amount in cash, specific securities, specific articles of tangible personal property or a percentage of the residue of the estate.

Bequests may be given as unrestricted or restricted gifts. Unrestricted bequests are used for the general purposes and can be applied to current needs. A named unrestricted endowment fund may be established as indicated in the

above section on "Outright Gifts." The (appropriate official or governing body) will designate the purpose and use of such a gift. A restricted bequest supports a certain purpose or program designated by the donor. Such a fund may be established as indicated in the section on "Outright Gifts." A gift in any amount may be accepted as a contribution to an existing fund earmarked for a specific need of the College/University so long as the terms and conditions of the existing fund so permit.

Among donors' options are residuary and contingent bequests. A residuary bequest will give the College/University all or a portion of the estate after all debts, taxes, expenses, and all other bequests have been paid. A contingent bequest will ensure that, despite unforeseen circumstances, specified property will pass to the College/University rather than unintended beneficiaries.

Donors may also establish, by will, an annuity trust or unitrust. The bequest can be arranged so as to provide a life income for a designated beneficiary by directing that the bequest be used to establish a charitable remainder annuity trust or charitable remainder unitrust. If such a gift is made by will, the principal will pass to the College/University only after the death of the life income beneficiary.

Gifts may be made to the College/University through the execution of a new will or addition, or through a codicil to an existing will. Donors may also add either a residual or contingent codicil to their wills.

Donors are encouraged to recognize that over the many years following the establishment of an endowment, the needs, policies, and circumstances of the College/University can change in unforeseen ways. The College/University administration must have the flexibility to make use of funds in the best interest of the institution and in accord with donor interests and specifications. Thus, donors are advised to describe the specific purposes of their gifts as broadly as possible and to avoid detailed limitations and restrictions. Donors considering bequests for a specific purpose are encouraged to consult the (development officer). The inclusion of a flexibility clause

similar to the clause in the section on "Endowment Funds" is most desirable.

Charitable Remainder Unitrust

The primary feature of a charitable remainder unitrust is that it provides for periodic payment of income to the donor, or another person specified by the donor, for life or a specified term of years, after which the trust assets pass to the College/University.

During the lifetime of the donor, he or she creates a formal trust agreement under which assets such as cash, appreciated securities, or both are irrevocably transferred to a trustee (a bank or the College/University) who then pays the donor, or a person specified by the donor, an income for life.

During the donor's lifetime, the trust assets are managed and invested by the trustee as a single fund. The donor cannot borrow or otherwise deal with the trust assets. The designated beneficiary receives payments based on a fixed percentage of the net fair market value of the trust as valued annually by the (appropriate official). The donor determines the fixed percentage which may not be less than five percent, upon creation of the unitrust. Donors may make subsequent additions to the unitrust during their lifetime or by bequest upon their death. The College/University will accept a charitable remainder unitrust for (state amount) or more.

Charitable Remainder Annuity Trust

The annuity trust shares many common features with the unitrust, the principal difference being the manner used to calculate the payment to the income beneficiary. Whereas the unitrust provides for a payout that varies with each annual valuation, the annuity trust provides for fixed payments based upon the fair market value on the date the trust is established. Another difference is that additional contributions cannot be made to an annuity trust.

The donor during his or her lifetime irrevocably transfers assets to a trustee, who pays the donor, or a person specified by the donor, a fixed dollar amount annually for life. The trust can also provide income for the donor's survivors for

life; however, the trust assets become the sole property of the College/University. A charitable remainder annuity trust for the College/University may be established with a gift of (state amount) or more.

Charitable Lead Trust

The primary feature of a charitable lead trust is that it provides for the immediate support of the College/University through income generated by the assets in trust for a set period of time, after which the assets pass to a non-charitable beneficiary such as the donor, the donor's children, or other persons the donor specifies. Thus, a charitable lead trust is conceptually the opposite of a charitable remainder trust. In a lead trust, the donor gives the College/University the current economic benefit of the transferred assets and retains the right to reacquire possession and control of the assets at a future date.

The donor during his or her lifetime creates an irrevocable trust agreement for a period of ten years or more. The agreement may take effect during the donor's lifetime or be part of the donor's will. Assets are transferred to a trustee, with the stipulation that the income from the assets be paid to the College/University for the life of the trust, after which the principal or corpus of the trust reverts back to the donor or others of his or her choosing.

A lead trust may be advantageous for donors who have a larger income than they currently need and who desire to transfer assets to heirs.

A charitable lead trust for the College/University may be established with a gift of (state amount) or more.

Gifts of Life Insurance

Life insurance can be the medium for giving funds to the College/University. With it, the donor can make a substantial gift for a relatively modest annual outlay. For instance, a donor may irrevocably assign to the College/University an existing life insurance policy that is no longer needed for family protection, making the College/University both the policy owner and the beneficiary. If the donor does not choose to continue paying the premiums, the College/

University may elect to:

- Continue paying the premiums and receive the full face value of the policy at the donor's death;
- Convert the policy to paid-up insurance in a reduced amount with no further payments; or
- Surrender the policy for its present cash value.

Before contributing gifts of life insurance to the College/University, donors should consult with the (development officer) to ensure that their gift will be consistent with the College's/University's policies and needs.

Gift of a Remainder Interest in a Personal Residence or Farm

A donor can give a remainder interest in a personal residence, such as a home or condominium, or a farm to the College/University. The donor or other occupants may continue to occupy the residence or operate the farm without disruption for the duration of the donor's life. Thereafter, the residence or farm will either be sold or used by the College/University for purposes specified by the donor, if any. The procedures for evaluating proposed gifts of real property, as outlined above, also apply to gifts of a remainder interest in property.

If a life estate is retained in the property, expenses for maintenance, real estate taxes, and any indebtedness relating to the property are to be borne by the donor or the primary beneficiary.

Final Approval, Acceptance, and Execution by the College/University

Documents effectuating the acceptance of all gifts, the creation of endowment programs, and the transfer of real or tangible personal property to the College/University must be approved by (legal counsel) and executed by the (appropriate official). Documents shall be executed in duplicate and the original shall be sent to the donor and to the (appropriate official).

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